

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JASON MCGUIRE,

Plaintiff,

-vs-

COUNTRYWIDE HOME LOANS,
INC., et al.,

Defendants.

CASE NO. 06-CV-15356

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

MONA K. MAJZOUN
UNITED STATES MAGISTRATE JUDGE

ORDER

**(1) ADOPTING IN PART THE MAGISTRATE JUDGE’S JUNE 12, 2007 AND AUGUST
1, 2007 REPORTS AND RECOMMENDATIONS;
(2) DENYING PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT;
(3) DISMISSING ALL DEFENDANTS FOR INSUFFICIENT SERVICE OF PROCESS;
AND (4) GRANTING IN PART THE MOTION TO DISMISS AS TO DEFENDANTS
SAMBOL, SANDFUR, AND BOW FOR FAILURE TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED**

Before the Court are the following: (1) the Magistrate Judge’s June 12, 2007 Report and Recommendation denying Plaintiff Jason McGuire’s (“Plaintiff”) Motion for Default Judgment; (2) the Magistrate Judge’s August 1, 2007 Report and Recommendation granting the motion to dismiss as to Defendants David Sambol, Jennifer Sandfur, and Susan Bow, and denying the motion to dismiss Defendants Mortgage Electronic Registration Systems, Inc. (“MERS”) and Countrywide Home Loans, Inc.; and (3) Defendants MERS and Countrywide’s August 14, 2007 Objections to the Magistrate Judge’s August 1, 2007 R&R. Having considered the entire record, and for the reasons that follow, the Court ADOPTS IN PART the Magistrate Judge’s Reports and Recommendations, DENIES Plaintiff’s Motion for Default Judgment; DISMISSES all Defendants for lack of proper service under Fed. R. Civ. P. 12(b)(5), and DISMISSES

Defendants Sambol, Sandfur, and Bow for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). This results in the dismissal of the case.

This case arises out of the foreclose of Plaintiff's mortgage loan by Defendants. On July 20, 2004, Plaintiff borrowed approximately \$143,000 from Community Central Mortgage. (Def. Br. Ex. A, Loan Document). As security for the loan, Plaintiff granted MERS a mortgage in the property known as 31441 Marilyn, Warren, Michigan. (Def. Br. Ex. B, Mortgage Documents). Community Central Mortgage subsequently assigned Plaintiff's loan to Countrywide Document Custody Services. (Def. Br. Ex. C, Allonge to Note).

Plaintiff failed to make the monthly mortgage payments beginning in September 1, 2005. MERS then commenced a foreclosure action on Warren property in 37th District Court.

Plaintiff then filed an action in Macomb County Circuit Court against Trott & Trott, P.C., Countrywide Home Loans, and Treasury Bank, asserting claims a fraud, misrepresentation and violations of the Truth in Lending Act. (Def. Br. Ex. D, Amended Complaint). The circuit court judge subsequently dismissed Plaintiff's claims against all defendants. (Def. Br. Ex. E, Opinion and Order).

Plaintiff filed the instant case on December 1, 2006. On April 16, 2007, Plaintiff filed an Amended Complaint against Defendants MERS, Countrywide Home Loans, Sambol, Sandfur, and Bow, alleging claims of breach of fiduciary duty and unjust enrichment.

On May 4, 2007, a judgment for possession was entered by the 37th District Court. (Def. Br. Ex. F, Judgment of Possession).

On May 7, 2007, Plaintiff filed a Motion for Default Judgment against all Defendants for failure to respond or otherwise defend the instant action. Defendants did not respond to

Plaintiff's motion.

On May 16, 2007, Defendants filed a Motion to Dismiss, contending that: (1) Defendants MERS and Countrywide should be dismissed under res judicata / collateral estoppel principles; and (2) Defendants Sambol, Sandfur, and Bow should be dismissed for failure to state a claim upon which relief could be granted.

On June 12, 2007, the Magistrate Judge issued an R&R on Plaintiff's Motion for Default Judgment. The Magistrate Judge found that: (1) Plaintiff's motion lacked a certificate of service demonstrating proper service on Defendants; and (2) despite filing several certificate of services, Plaintiff failed to effect proper service of his Complaint or Amended Complaint on Defendants under Fed. R. Civ. P. 4(e).

None of the parties objected to the June 12, 2007 R&R.

On June 25, 2007, Plaintiff then filed a Response to Defendants' motion to dismiss, but did not discuss the Magistrate Judge's finding on the insufficient service of process nor Defendants' arguments as to Sambol, Sandfur, and Bow.

On August 1, 2007, the Magistrate Judge produced a second R&R on Defendants' motion to dismiss. The Magistrate Judge concluded that: (1) Plaintiff's Amended Complaint failed to state a claim against the individual Defendants; and (2) Defendants MERS and Countrywide failed to show how res judicata or collateral estoppel barred Plaintiff's instant case.

On August 14, 2007, Defendants filed Objections to the Magistrate Judge's R&R. Defendants essentially contend that the Magistrate Judge erred in dismissing the res judicata and collateral estoppel arguments as they pertain to MERS and Countrywide.

Upon careful review of the record, the Court adopts the Magistrate Judge's findings that

Plaintiff's case should be dismissed as to all Defendants for failure to effect proper service on Defendants under Rule 4(e) and that Plaintiff's default judgment motion should be denied. Furthermore, Plaintiff does not contest the Magistrate Judge's conclusion that the individual Defendants should be dismissed from the case based upon his failure to state a claim upon which relief can be granted.

The Court hereby:

- (1) **ADOPTS IN PART** the Magistrate Judge's June 12, 2007 and August 1, 2007 Reports and Recommendations;
- (2) **DENIES** Plaintiff's Motion for Default Judgment (Doc. No. 18);
- (3) **DISMISSES** all Defendants for insufficient service of process; and
- (4) **GRANTS IN PART** Defendants motion to dismiss as to Sambol, Sandfur, and Bow for failure to state a claim upon which relief can be granted (Doc. No. 25).

These grounds are adequate to dismiss the instant case.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: November 30, 2007

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on November 30, 2007.

s/Denise Goodine
Case Manager